IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

FRIDAY, THE 27TH JULY 2007 / 5TH SRAVANA 1929

WP(C).No. 21580 of 2007(R)

OS.215/2006 of II ADDL.SUB COURT,ERNAKULAM
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PETITIONER:

M.K.RADHAKRISHNAN, S/O. KESHAVAN,
AGED 68 YEARS, RESIDING AT PARAKKADAVIL HOUSE,
IRUMPANAM P.O., TRIPUNITHURA (VIA),
THIRUVAMKULAM VILLAGE, KANAYANNOOR TALUK.

BY ADV. SRI.C.K.PAVITHRAN

RESPONDENTS:
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1. **RAVINDRA SINGH, S/O. KESHAVAN,**
   AGED 63 YEARS, RESIDING AT PARAKKADAVIL HOUSE,
   IRUMPANAM DESOM, IRUMPANAM P.O.,
   THIRUVAMKULAM VILLAGE, KANAYANNOOR TALUK.

2. **P.C.DASAN, S/O. KESHAVAN, AGED 71 YEARS,**
   RESIDING AT PARAKKADAVIL HOUSE, IRUMPANAM DESOM,
   IRUMPANAM P.O., THIRUVAMKULAM VILLAGE,
   KANAYANNOOR TALUK, NOW RESIDING AT PARAKKADAVIL
   HOUSE, NEAR K.S.H.B. PROPERTY, CALICUT MEDICAL
   COLLEGE P.O., KOZHIKODE.

BY ADV. SRI.P.K.BALAKRISHNAN NAIR

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 27/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

EXT. P1 **TRUE COPY OF THE PLAINT IN OS 215/06 OF 2ND ADDL.SUB COURT, ERNAKULAM.**

EXT.P2 **TRUE COPY OF THE WRITTEN STATEMENT IN OS 215/06.**

EXT.P3 **TRUE COPY OF THE IA 5890/06 IN OS 215/06.**

EXT.P4 **TRUE COPY OF HE COUNTER AFFIDIAVIT IN IA 5890/06 IN OS 215/06.**

EXT.P5 **TRUE COPY THE JUDGMNET DTD.5.3.07 IN WPC 7191/07 OF THIS COURT.**

EXT.P6 **TRUE COPY OF THE ORDER DTD.13.6.07 IN IA.5890/06 IN OS 215/06.**

[True copy]

P.A. to Judge.

M.N. KRISHNAN, J.

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W.P.C. NO. 21580 OF 2007

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Dated this the 27th day of July, 2007.

J U D G M E N T

This writ petition is filed challenging the order, Ext.P6 passed by the Sub Court, Ernakulam. The defendants in the suit had denied execution of the agreement in a suit for specific performance of a contract. They had filed an application before the trial court for expert opinion as regards the signatures in the agreement and that has been resisted by the plaintiff in the suit. On an earlier occasion the matter came up before this Court as WPC 7191/07 and this Court directed the Court below to pass appropriate orders on the said petition before including the suit for trial in the list.

2. The learned Subordinate Judge had now passed an order where by he has stated that the agreement can be proved by otherwise as well by direct evidence and after recording the oral evidence the Court may consider whether an expert opinion has to be called for. If such a course is

adopted it may not be proper in a trial system which is now followed by the Court below. Comparison of signatures though permissible u/s 73 of the Evidence Act, is a hazardous approach for the reason that if the Court attempts to compare the signature it is a body which does not have the expertise in the science of comparison of hand writing or signature. The Apex Court had deprecated the practice of comparison by the Court and it is now a well settled proposition of law that though there can be a comparison of signature it shall not be the criteria for deciding the issue. It is true that a document can be proved by various form of evidence, including direct evidence as well as scientific evidence. When a defendant in a case categorically asserts that he has not executed the document and request the help of the Court to send the signature for scientific examination by an expert unless there are sufficient circumstances, in the ordinary course, it shall not be repelled. The Court below has opined that it is true that expert opinion is only an opinion report still it has got clippings of a scientific investigation and therefore it is entitled to value.

3. In a case of this nature it is better that the expert opinion is received at the earliest so that the parties can examine the same and adduce evidence in support of and against the same scientifically as well as by examining the expert. Therefore, there is no point in delaying the matter to be sent for expert opinion till the oral evidence is over. Therefore, the order under challenge is set aside and the Court below is directed to send the document which is under dispute for comparison of signature with the admitted signature of party which is anterior in point of time and also if necessary by taking a specimen hand writing from the Court. The Court below shall bestow its attention to send the matter to an expert who will be able to submit a report within a prescribed period of time and not to wait inordinately to get a report. Accordingly, the writ petition is allowed.

M.N. KRISHNAN, JUDGE.

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